

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1235

Introduced by Assembly Member Hayashi

February 27, 2009

~~An act to amend Section 7582.2 of, and to add Section 7583.47 to, the Business and Professions Code, relating to private patrol operators. An act to amend Section 512 of the Labor Code, relating to security officers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1235, as amended, Hayashi. ~~Private patrol operators. Security officers: meal periods.~~

The Private Security Services Act provides for the licensure and regulation of private patrol operators by the Bureau of Security and Investigative Services in the Department of Consumer Affairs. Under existing law, security guards and street patrolpersons are employed by private patrol operators to perform specified functions.

Existing law, except as specified, prohibits an employer from employing an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes. Existing law, except as specified, also prohibits an employer from employing an employee for a work period of more than 10 hours per day without providing the employee with a 2nd meal period of not less than 30 minutes.

~~This bill would authorize registered security guards or streetpatrol persons and licensed private patrol operators to agree in writing to paid~~

~~on-duty meal periods or unpaid, off-duty meal periods, if certain conditions are met. The bill would also make nonsubstantive, technical changes to another provision of the Private Security Services Act.~~

This bill would require that a registered security officer who is employed by a registered private patrol operator be permitted to take on-duty meal periods for which full compensation is provided if (1) the security officer is covered by a valid collective bargaining agreement containing specified provisions, or (2) the security officer and his or her employer have voluntarily entered into a written on-duty meal period agreement that meets certain conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 512 of the Labor Code is amended to
2 read:

3 512. (a) An employer may not employ an employee for a work
4 period of more than five hours per day without providing the
5 employee with a meal period of not less than 30 minutes, except
6 that if the total work period per day of the employee is no more
7 than six hours, the meal period may be waived by mutual consent
8 of both the employer and employee. An employer may not employ
9 an employee for a work period of more than 10 hours per day
10 without providing the employee with a second meal period of not
11 less than 30 minutes, except that if the total hours worked is no
12 more than 12 hours, the second meal period may be waived by
13 mutual consent of the employer and the employee only if the first
14 meal period was not waived.

15 (b) Notwithstanding subdivision (a), the Industrial Welfare
16 Commission may adopt a working condition order permitting a
17 meal period to commence after six hours of work if the commission
18 determines that the order is consistent with the health and welfare
19 of the affected employees.

20 (c) Subdivision (a) does not apply to an employee in the
21 wholesale baking industry who is subject to an Industrial Welfare
22 Commission wage order and who is covered by a valid collective
23 bargaining agreement that provides for a 35-hour workweek
24 consisting of five ~~seven-hour~~ 7-hour days, payment of ~~one and~~ $\frac{1}{2}$
25 ~~one-half times~~ the regular rate of pay for time worked in excess

1 of seven hours per day, and a rest period of not less than 10 minutes
2 every two hours.

3 (d) If an employee in the motion picture industry or the
4 broadcasting industry, as those industries are defined in Industrial
5 Welfare Commission Wage-Orders Order Numbers 11 and 12, is
6 covered by a valid collective bargaining agreement that provides
7 for meal periods and includes a monetary remedy if the employee
8 does not receive a meal period required by the agreement, then the
9 terms, conditions, and remedies of the agreement pertaining to
10 meal periods apply in lieu of the applicable provisions pertaining
11 to meal periods of subdivision (a) of this section, Section 226.7,
12 and Industrial Welfare Commission Wage-Orders Order Numbers
13 11 and 12.

14 (e) (1) *Notwithstanding subdivisions (a) and (b), a security*
15 *officer who is registered pursuant to Chapter 11.5 (commencing*
16 *with Section 7580) of Division 3 of the Business and Professions*
17 *Code, and who is employed by a private patrol operator who is*
18 *also registered pursuant to that chapter, may take on-duty meal*
19 *periods for which full compensation is provided if either of the*
20 *following conditions is met:*

21 (A) *The security officer is covered by a valid collective*
22 *bargaining agreement that expressly provides for the wages, hours*
23 *of work, working conditions, and meal periods of employees, final*
24 *and binding arbitration of disputes concerning the application of*
25 *its meal period provisions, premium wage rates for all overtime*
26 *hours worked, and a regular hourly rate of pay that is not less*
27 *than 30 percent more than the state minimum wage.*

28 (B) *The security officer and his or her employer have voluntarily*
29 *entered into a written on-duty meal period agreement that does*
30 *all of the following:*

31 (i) *Permits the security officer to take a compensated, 30-minute,*
32 *on-duty meal period during each work period of five hours or more*
33 *in lieu of an unpaid, 30-minute, off-duty meal period during the*
34 *same work period.*

35 (ii) *Permits the security officer to take a second compensated,*
36 *on-duty meal period under the same conditions as the first on-duty*
37 *meal period if the security officer works for 10 hours or more in*
38 *one work period.*

39 (iii) *Requires that the security officer receive full compensation*
40 *for on-duty meal periods.*

1 (iv) Provides that the security officer may revoke the agreement
2 in writing at any time.

3 (2) This subdivision shall not apply to an armored vehicle guard
4 employed by an armored contract carrier, as those terms are
5 defined in subdivisions (c) and (d) of Section 7582.1 of the Business
6 and Professions Code.

7 SEC. 2. Notwithstanding any other provision of law, the
8 addition of subdivision (e) to Section 512 of the Labor Code made
9 by this act does not affect the nature or scope of the law relating
10 to meal periods, including the timing of the commencement of a
11 meal period, for employees or employers not covered by that
12 subdivision.

13 ~~SECTION 1. The Legislature has determined that registered~~
14 ~~security guards or street patrolpersons, employed by licensed~~
15 ~~private patrol operators, function in an emergency service and first~~
16 ~~responder capacity, and therefore it is the intent of the Legislature~~
17 ~~to develop a scheme whereby these persons may make alternative~~
18 ~~arrangements regarding meal breaks.~~

19 ~~SEC. 2. Section 7582.2 of the Business and Professions Code~~
20 ~~is amended to read:~~

21 ~~7582.2. This chapter shall not apply to the following:~~

22 ~~(a) A person who does not meet the requirements to be a~~
23 ~~proprietary private security officer, as defined in Section 7574.1,~~
24 ~~and is employed exclusively and regularly by any employer who~~
25 ~~does not provide contract security services for other entities or~~
26 ~~persons, in connection with the affairs of the employer only and~~
27 ~~where there exists an employer-employee relationship if that person~~
28 ~~at no time carries or uses any deadly weapon in the performance~~
29 ~~of his or her duties. For purposes of this subdivision, "deadly~~
30 ~~weapon" is defined to include any instrument or weapon of the~~
31 ~~kind commonly known as a blackjack, slungshot, billy, sandclub,~~
32 ~~sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any~~
33 ~~other firearm, any knife having a blade longer than five inches,~~
34 ~~any razor with an unguarded blade and any metal pipe or bar used~~
35 ~~or intended to be used as a club.~~

36 ~~(b) An officer or employee of the United States of America, or~~
37 ~~of this state or a political subdivision thereof, while the officer or~~
38 ~~employee is engaged in the performance of his or her official~~
39 ~~duties, including uniformed peace officers employed part time by~~
40 ~~a public agency pursuant to a written agreement between a chief~~

1 of police or sheriff and the public agency, provided the part-time
2 employment does not exceed 50 hours in any calendar month.

3 (e) ~~A person engaged exclusively in the business of obtaining~~
4 ~~and furnishing information as to the financial rating of persons.~~

5 (d) ~~A charitable philanthropic society or association duly~~
6 ~~incorporated under the laws of this state that is organized and~~
7 ~~maintained for the public good and not for private profit.~~

8 (e) ~~Patrol special police officers appointed by the police~~
9 ~~commission of any city, county, or city and county under the~~
10 ~~express terms of its charter who also under the express terms of~~
11 ~~the charter (1) are subject to suspension or dismissal after a hearing~~
12 ~~on charges duly filed with the commission after a fair and impartial~~
13 ~~trial, (2) must be not less than 18 years of age nor more than 40~~
14 ~~years of age, (3) must possess physical qualifications prescribed~~
15 ~~by the commission, and (4) are designated by the police~~
16 ~~commission as the owners of a certain beat or territory as may be~~
17 ~~fixed from time to time by the police commission.~~

18 (f) ~~An attorney at law in performing his or her duties as an~~
19 ~~attorney at law.~~

20 (g) ~~A collection agency or an employee thereof while acting~~
21 ~~within the scope of his or her employment, while making an~~
22 ~~investigation incidental to the business of the agency, including~~
23 ~~an investigation of the location of a debtor or his or her property~~
24 ~~where the contract with an assignor creditor is for the collection~~
25 ~~of claims owed or due or asserted to be owed or due or the~~
26 ~~equivalent thereof.~~

27 (h) ~~Admitted insurers and agents and insurance brokers licensed~~
28 ~~by the state, performing duties in connection with insurance~~
29 ~~transacted by them.~~

30 (i) ~~Any bank subject to the jurisdiction of the Commissioner of~~
31 ~~Financial Institutions under Division 1 (commencing with Section~~
32 ~~99) of the Financial Code or the Comptroller of Currency of the~~
33 ~~United States.~~

34 (j) ~~A person engaged solely in the business of securing~~
35 ~~information about persons or property from public records.~~

36 (k) ~~A peace officer of this state or a political subdivision thereof~~
37 ~~while the peace officer is employed by a private employer to~~
38 ~~engage in off-duty employment in accordance with Section 1126~~
39 ~~of the Government Code. However, nothing herein shall exempt~~
40 ~~such peace officer who either contracts for his or her services or~~

1 the services of others as a private patrol operator or contracts for
2 his or her services as or is employed as an armed private security
3 officer. For purposes of this subdivision, “armed security officer”
4 means an individual who carries or uses a firearm in the course
5 and scope of that contract or employment.

6 ~~(l) A retired peace officer of the state or political subdivision~~
7 ~~thereof when the retired peace officer is employed by a private~~
8 ~~employer in employment approved by the chief law enforcement~~
9 ~~officer of the jurisdiction where the employment takes place;~~
10 ~~provided that the retired officer is in a uniform of a public law~~
11 ~~enforcement agency, has registered with the bureau on a form~~
12 ~~approved by the director, and has met any training requirements~~
13 ~~or their equivalent as established for security personnel under~~
14 ~~Section 7583.5. This officer may not carry a loaded or concealed~~
15 ~~firearm unless he or she is exempted under the provisions of~~
16 ~~subdivision (a) of Section 12027 of the Penal Code or paragraph~~
17 ~~(1) of subdivision (b) of Section 12031 of the Penal Code or has~~
18 ~~met the requirements set forth in Section 12033 of the Penal Code.~~
19 ~~However, nothing herein shall exempt the retired peace officer~~
20 ~~who contracts for his or her services or the services of others as a~~
21 ~~private patrol operator.~~

22 ~~(m) A licensed insurance adjuster in performing his or her duties~~
23 ~~within the scope of his or her license as an insurance adjuster.~~

24 ~~(n) Any savings association subject to the jurisdiction of the~~
25 ~~Commissioner of Financial Institutions or the Office of Thrift~~
26 ~~Supervision.~~

27 ~~(o) Any secured creditor engaged in the repossession of the~~
28 ~~creditor’s collateral and any lessor engaged in the repossession of~~
29 ~~leased property in which it claims an interest.~~

30 ~~(p) A peace officer in his or her official police uniform acting~~
31 ~~in accordance with subdivisions (c) and (d) of Section 70 of the~~
32 ~~Penal Code.~~

33 ~~(q) An unarmed, uniformed security person employed~~
34 ~~exclusively and regularly by a motion picture studio facility~~
35 ~~employer who does not provide contract security services for other~~
36 ~~entities or persons in connection with the affairs of that employer~~
37 ~~only and where there exists an employer-employee relationship if~~
38 ~~that person at no time carries or uses any deadly weapon, as defined~~
39 ~~in subdivision (a), in the performance of his or her duties, which~~

1 may include, but are not limited to, the following business
2 purposes:

3 (1) The screening and monitoring access of employees of the
4 same employer.

5 (2) The screening and monitoring access of prearranged and
6 preauthorized invited guests.

7 (3) The screening and monitoring of vendors and suppliers.

8 (4) Patrolling the private property facilities for the safety and
9 welfare of all who have been legitimately authorized to have access
10 to the facility.

11 (r) The changes made to this section by the act adding this
12 subdivision during the 2005-06 Regular Session of the Legislature
13 shall apply as follows:

14 (1) On and after July 1, 2006, to a person hired as a security
15 officer on and after January 1, 2006.

16 (2) On and after January 1, 2007, to a person hired as a security
17 officer before January 1, 2006.

18 SEC. 3. Section 7583.47 is added to the Business and
19 Professions Code, to read:

20 7583.47. (a) Notwithstanding any other provision of law, a
21 registered security guard or street patrolperson and a licensed
22 private patrol operator may agree to paid, on-duty meal periods if
23 the following conditions are met:

24 (1) The security guard or street patrolperson and the private
25 patrol operator voluntarily enter into a written agreement for a
26 paid, on-duty meal period which includes a statement that the
27 security guard or street patrolperson may revoke the agreement,
28 in writing, without a penalty.

29 (2) The agreement authorizes the security guard or street
30 patrolperson to take a 30 minute paid, on-duty meal period during
31 every shift of five hours or more.

32 (3) The on-duty meal period is fully paid and counted as time
33 worked.

34 (4) If the security guard or street patrolperson works a shift of
35 10 hours or more, the employee may take a second paid, on-duty
36 meal period.

37 (b) Notwithstanding any other provision of law, a registered
38 security guard or street patrolperson and a licensed private patrol
39 operator may agree to unpaid, off-duty meal periods if the
40 following conditions are met:

1 ~~(1) The security guard or street patrolperson and the private~~
2 ~~patrol operator voluntarily enter into a written agreement for an~~
3 ~~unpaid, off-duty meal period which includes a statement that the~~
4 ~~security guard or street patrolperson may revoke the agreement,~~
5 ~~in writing, without a penalty.~~

6 ~~(2) The agreement authorizes the security guard or street~~
7 ~~patrolperson to take a 30 minute unpaid, off-duty meal period~~
8 ~~during every shift of five hours or more.~~

9 ~~(3) The off-duty meal period is not paid and not counted as time~~
10 ~~worked.~~

11 ~~(4) If the security guard or street patrolperson works a shift of~~
12 ~~10 hours or more, the employee may take a second unpaid, off-duty~~
13 ~~meal period.~~